

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WILSON EARL LOVE,

Plaintiff,

v.

THE STATE OF NEVADA,

Defendant.

Case No. 2:20-cv-02095-KJD-EJY

**ORDER ADOPTING AND AFFIRMING
MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

Before the Court for consideration is the Report and Recommendation (ECF #3) containing the findings and recommendations of Magistrate Judge Elayna J. Youchah entered November 16, 2020, recommending that Plaintiff's action be dismissed with prejudice. Plaintiff filed an objection to the report. (ECF #4).

The Court has conducted a de novo review of the record in this case in accordance with 28 U.S.C. § 636(b)(1) and LR IB 3-2. The Court determines that the Report and Recommendation (ECF #3) containing the findings and recommendations of Magistrate Judge Youchah, entered November 16, 2020, should be **ADOPTED** and **AFFIRMED** in part. In addition to the magistrate judge's reasoning, Plaintiff's proposed amended complaint has not alleged that his conviction was reversed, expunged, declared invalid or called into question by issuance of a writ of habeas corpus, as required before his desired remedy may be awarded. Heck v. Humphrey, 512 U.S. 477, 486–87 (1994). As such, dismissal with prejudice is appropriate regarding the claims against the state of Nevada. Plaintiff's amended complaint names the Las Vegas Metropolitan Police Department as a party. However, to state a claim under § 1983, which Plaintiff appears to be doing, he must plausibly allege that he "suffered the deprivation of a federally protected right and that the alleged deprivation was committed by a person acting under color of state law." Sampson v. Cnty. of Los Angeles by and through Los Angeles Cnty. Dep't.


1 of Children and Family Services, 974 F.3d 1012, 1018 (9th Cir. 2020) (internal quotations
2 omitted). If Plaintiff can name individuals who deprived him of his rights and satisfy the Heck
3 requirements, amendment may not be futile. As such, Plaintiff's Motion to Amend (ECF #5) is
4 denied without prejudice.

5 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and
6 Recommendation (ECF #3) is **ADOPTED** and **AFFIRMED** in part and the action is dismissed
7 with prejudice regarding the claims against the State of Nevada. The other claims are dismissed
8 without prejudice as amendment may not be futile.

9 IT IS FURTHER ORDERED that Plaintiff's Motion to Amend (ECF #5) is **DENIED**.

10 IT IS FINALLY ORDERED that Plaintiff shall have thirty days to file an amended
11 complaint that meets the requirements above. Failure to comply may lead to dismissal of
12 Plaintiff's complaint with prejudice.

13 Dated this 26th day of February, 2021.



Kent J. Dawson
United States District Judge